General Affairs Committee January 22, 2007

[LB64 LB181 LB251]

The Committee on General Affairs met at 1:30 p.m. on Monday, January 22, 2007, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB64, LB181, and LB251. Senators present: Vickie McDonald, Chairperson; Russ Karpisek, Vice Chairperson; Merton "Cap" Dierks, Annette Dubas; Philip Erdman; Mike Friend; Ray Janssen; and Don Preister. Senators absent: None. [LB64 LB181]

SENATOR McDONALD: And I am Senator Vickie McDonald and I'm a chairman of the committee. I'm from St. Paul, Nebraska. We do have several committee members absent, but we do have quite a few present. So we're going to start off to my left is Senator Preister from Omaha, Senator Dubas from Fullerton, Senator Janssen from Nickerson. We have Senator Dierks from Ewing and Senator Karpisek from Wilber. Our page is Marcus Bish from Ord and my committee staff to the right is Laurie Lage and she's our legal counsel. And to my left is Nicole Trexel, our committee clerk. Today we're going to hear three bills. We're going to hear LB64 by Senator Schimek, LB181 by Senator Kruse, and LB251 by Senator Synowiecki. After the bill openings, we will first hear testimony in support of the bill, and then we'll hear opposition, and then finally neutral testimony. If you're planning to testify in any capacity, please pick up a form at each of the doors and have it ready when you come to testify. Please have it filled out and then hand it to one of the pages, and then one of the pages will hand it to our committee clerk. If you have handouts, please make sure that you have at least 10 of those so that we can have the page pass them out to the committee members. And when you come up to the podium to testify, please speak clearly. State your name and then spell your name. And if you're representing an organization or your behalf, please let us know that also. Please turn off all cell phones or anything that makes noise. Keep your conversations minimal or take them outside and you can finish them out there. For this hearing, the first two bills we're going to hear together because they're of similar subjects. So I think we'll have LB64 by Senator Schimek. Good to have you. [LB64 LB181]

SENATOR SCHIMEK: (Exhibits 1 and 2) Thank you, Madam Chair. It is the first time I've been to this committee in awhile so it's always a pleasure to be back, even though the committee has changed somewhat. For the record, my name is DiAnna Schimek. I represent the 27th Legislative District, the "historic district," and I am here to introduce LB64. LB64 looks very simple on its face, and actually in some ways it is. It's about a one-sentence bill, as you can see, and it strikes three provisions of statute, four sections of statute, and I would like to go into each of those sections just a little bit. These four sections of statute were passed in 2004 when there were four initiatives on the ballot regarding gambling. And 9-901 is the first one that we should deal with, but overall these statutes deal with defining terms related to gaming and the establishment of tax rates and licensing fees for casinos. As beneficial as it may seem on the surface, we

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must remember that casino gaming still is not legal in the state of Nebraska and the statutory language was created by a segment of the gaming industry to benefit its best interest, not necessarily those of the state. The first section is 9-901 and it contains definitions for terms such as casinos, dollar amount, gross gaming revenue, etcetera. And simply put these definitions aren't necessary unless, of course, we would want casino-style gambling. The second section, 9-902, states that the first \$15 million of gross gaming revenue will be taxed to the rate of 36 percent which may sound reasonable at first; however, any remaining casino profits will be taxed at only 20 percent. This is a recessive kind of taxation and most states do just the opposite and increase the tax rate as the adjusted gross receipts also increase. For example, in the state of Illinois the first \$25 million is taxed at 15 percent, but gradually increases from 15 percent to 20 percent if it's on \$25 million to \$50 million. Then it increases even further to 25 percent anything in excess of \$50 million, but not exceeding \$75 million and so on. I could go on and on, because they have more graduations than that. Other states that use the same type of progressive tax plan are lowa, Louisiana, and Mississippi, just to name a few. This type of tax schedule brings in amounts of revenue that would dwarf the recessive plan established in 9-902. For this reason, it certainly appears that the group responsible for this tax rate language was most concerned with profits and not necessarily improving Nebraska's financial prospects, I guess, and their ability to provide infrastructure. I think the better plan for our state would be to negotiate tax rates if there were such permission granted. And that would be based on current practice in other states, because other states are continually modifying. The bottom line with section 9-902, however, is that because the people voted against casino gambling in 2004, there is nothing to tax--nothing. Therefore, it's unnecessary and should be repealed. The third section, 9-903, established an annual gaming license fee of \$100. The problem is that this is too small of a fee. The Omaha World-Herald editorialized what many of us were thinking, that this \$100 fee was paltry in comparison to the fees in other states. For instance, the state of Nevada has annual fees of up to \$6,000 depending on the establishment. These are paid at both the local and state levels, and include additional fees per slot machine ranging from \$80 to \$225 depending on the type of license the establishment holds. It is easy to see that under this statute the gambling industry would thrive in Nebraska while state government would have little to show for it. The final section, 9-904, states that taxes and fees established in the previous two sections are in lieu of all other taxes, fees, franchise payments, occupation taxes, or excise taxes levied or imposed by the state; but shall not be in lieu of such other fees, income taxes, sales taxes, or property taxes levied or imposed against the public generally. This section, like the other three, is unnecessary as long as there are no casinos in existence. The task which what the Legislature is now faced is the repeal of these four sections of statute. And if you agree that they should be repealed, then you also need to be reminded that in 2004, Initiative 418 changed provisions of law to say that two-thirds of the Legislature would be required to repeal these particular provisions--two-thirds of the Legislature. However, the bottom line remains that these are complex issues that ought to be negotiated by skilled negotiators not only by the

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gambling industry, but by officials from state government to ensure that the state's best interests are the prime factor in determining things like tax rates and fees should--and I say should--casino gaming or gaming ever be legal in this state. And with that, Madam Chair, I'd be happy to answer any questions. I also, if the pages wouldn't mind, I have a couple of handouts here. So thank you. [LB64 LB181]

SENATOR McDONALD: Okay. Senator Dierks. [LB64 LB181]

SENATOR DIERKS: Senator Schimek, the bottom line is that there's no fiscal note either plus or minus here, is there? [LB64 LB181]

SENATOR SCHIMEK: That's right, because... [LB64 LB181]

SENATOR DIERKS: And this bill is exactly the same as Senator Kruse's bill. [LB64 LB181]

SENATOR SCHIMEK: As far as I can tell they are exactly the same. Two great minds running in the same channel. [LB64 LB181]

SENATOR DIERKS: Well, that's right. [LB64 LB181]

SENATOR KRUSE: Yes, yes. [LB64 LB181]

SENATOR DIERKS: Well, you ought to be congratulated for that. [LB64 LB181]

SENATOR SCHIMEK: Thank you. (Laughter) [LB64 LB181]

SENATOR DIERKS: Thank you. [LB64 LB181]

SENATOR McDONALD: Any other questions for Senator Schimek? If not, do you plan on closing? [LB64 LB181]

SENATOR SCHIMEK: No, thank you very much. [LB64 LB181]

SENATOR McDONALD: Okay, thank you. Senator Kruse? [LB64 LB181]

SENATOR KRUSE: Thank you, Senators, Madam Chair. As has already been indicated, this is the same bill. Neither one of us knew the other was doing it or we wouldn't have done it. My staff worked it up in November when the <u>World-Herald</u> first called our attention to it and, you know, we were thinking about it somewhat, but that was very helpful. I appreciate their recognition that this is really obsolete language, because it doesn't refer to anything that we have done or that we really would intend to do. The situation was, as I recall, a four part thing that the casino push in '04 was

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separated into four parts because of reasons we're all aware of. You have to separate it so that you don't have too many issues in one item. The constitutional amendment to establish casinos failed. The statutory amendment to say how those casinos would be run succeeded. Don't ask me to explain that. The public gets confused on these matters as we've seen in the last round of voting on initiatives and it doesn't need to be explained, except that we have a piece of statute in there that really is not necessary and could be a nuisance to us. One of the reporters that came early on when they saw the bill said to me, well, since it came from the World-Herald and you're also in opposition to casinos, this must be an anti-casino bill. Well, I don't think so. It never occurred to me. I, in fact, said to the person I think the case could be made that if you are anti-casino you would want this bill to be turned down. You would want that to remain on statute, because it'll be a clear detriment to any casino push as it was in '06 last year, because the ads came in and said \$100 for a license when it should be \$1 million. Who believes that? Oh, I think our effort is clearly not to take a side on the casinos, but to clear up the language, take care of obsolete things which could get us into trouble down the road if somebody wants to put together a casino effort and have a casino, it should start, as Senator Schimek has indicated, with a clean record and a total package and not have this cluttering up the landscape. One other comment and that is, I don't know of anyone intending to prioritize this bill. In my mind it clearly is something we need to have done as a cleanup matter. It's just that it gets done before we have a voting again. It's not really timely. But I would hope that committee would find some way to tuck it in someplace where it could be done with the least amount of confusion. And I promise any floor speeches I make on it will be under a minute. Thank you. [LB64] LB181]

SENATOR McDONALD: Any questions for Senator Kruse? Senator Karpisek. [LB64 LB181]

SENATOR KARPISEK: Thank you, Madam Chair. Senator Kruse, I'm having a little trouble, and I should have asked Senator Schimek, are we trying to also get rid of 418 here that doesn't deal with the gaming? [LB64 LB181]

SENATOR KRUSE: No. No, and that one piece of that four part was the item Senator Schimek referred to that said all the voter initiatives--I'm not sure this was really a voter initiative, but technically it was--have to have a two-thirds vote for the Legislature to amend or change or remove. So it's going to take 33 votes on the floor. And that's one of the reasons we need to get the message out pretty clearly. [LB64 LB181]

SENATOR KARPISEK: And so then that's what 418 is, the 33 votes. [LB64 LB181]

SENATOR KRUSE: Yes. [LB64 LB181]

SENATOR KARPISEK: Correct? [LB64 LB181]

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SENATOR KRUSE: Well, yes. [LB64 LB181]

SENATOR KARPISEK: Um-hum. [LB64 LB181]

SENATOR KRUSE: I think that's the number on that one. [LB64 LB181]

SENATOR KARPISEK: Okay. I just wasn't clear as to that we weren't messing with that

one. [LB64 LB181]

SENATOR KRUSE: No, we're just taking one here. [LB64 LB181]

SENATOR KARPISEK: Okay. [LB64 LB181]

SENATOR KRUSE: And it's the one that has the rates in it and the items that she went

over. [LB64 LB181]

SENATOR KARPISEK: I agree with that. I just don't want to lump 418 in with others.

[LB64 LB181]

SENATOR KRUSE: Yeah, no. [LB64 LB181]

SENATOR KARPISEK: Okay, thank you, Senator Kruse. [LB64 LB181]

SENATOR McDONALD: Senator Kruse, if nothing is done with the state statutes at this point in time and if there is a gambling initiative and it does pass, is it too late to change these statutes at that point in time or would it be better to do it prior to that initiative? [LB64 LB181]

SENATOR KRUSE: That's a very good question, Senator. No, it wouldn't be too late, but it would be confusing because to make that change at that time, because of things they've already done, it would take two-thirds vote for the Legislature to change it from \$100 to \$1 million. Now, again, I think there would be enough push, there's enough carrot out there dangling in front of our money deficit eyes, that we'd say oh, oh, oh, that looks good, but it really would confuse the thing. And it could be done at that time. I don't think the voters would trust us. They kind of expect it to happen, but they wouldn't really trust us to make that change afterwards. So therefore, it would be a bit of a problem, I think, to the promoters. [LB64 LB181]

SENATOR McDONALD: So timing is an issue. [LB64 LB181]

SENATOR KRUSE: Yes, but it could be done. And it certainly could be done after if they pass the casino constitutional amendment then we could come in and pass the

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other. [LB64 LB181]

SENATOR McDONALD: Okay. Any other questions? Thank you. Are you planning on closing? [LB64 LB181]

SENATOR KRUSE: No, I don't think so. [LB64 LB181]

SENATOR McDONALD: All right. [LB64 LB181]

SENATOR KRUSE: Thank you. [LB64 LB181]

SENATOR McDONALD: Thank you. We will take testifiers on both bills. And so when you come to the front, you want to let us know what bill you're testifying on or if you're testifying for both of them. Do we have anybody that would like to testify? And this would be in support. Yes. [LB64 LB181]

PAT LOONTJER: (Exhibit 3) Senator McDonald and ladies and gentlemen of the committee, I am Pat Loontjer, that's spelled L-o-o-n-t-j-e-r, and I'm the executive director of Gambling with the Good Life which has been the organization since 1995 that has opposed any form of expanded gambling in the state of Nebraska. I believe that we are the largest grass roots coalition in the state. We had every church in the state in our coalition in the past and have worked with us on a number of petition efforts trying to bring gambling in. A majority of them sponsored by Nevada. Every one of them have been defeated. The last one that we faced just in November 2006 was the Keno slot proposal. And that was soundly defeated and we carried 92 out of 93 counties on that. So the citizens of the state of Nebraska are obviously opposed to expanded gambling, especially in the form of slots and casinos. In 2004, when this was passed it was part of a four part Nevada proposal, blatantly, in the best interest of Nevada. Certainly not in the best interest of the citizens in the state of Nebraska. But somehow this thing got passed and we've been stuck with it. It's been called the carrot that is drawing, especially Nevada gambling, interest back to continue to try to take over our state. And I brought you a copy of the editorial. I don't know if that was part of Senator Schimek's materials that she gave you or not, but the editorial addresses all of that saying this is a piece of legislation that needs to be removed. It's irrelevant. It doesn't apply to anything since the industry itself is not allowed in Nebraska. But it is causing that consternation of us constantly having to face those petition efforts and mount up our opposition every two years to beat them off again. It's exhausting, but we have a passion for this. We believe that the slot machines and the casinos would not only devastate our economy, but destroy many, many families in Nebraska. And so that's why we continue to do what we've done year, after year, after year. The proposals in 419, it makes a mockery of Nebraska. Right now they're negotiating on 14 casinos in Pennsylvania. And the last I heard, they were talking about starting the bidding at \$500 million for a license. So this just makes us look like fools. It needs to be removed. It's just irrelevant. We're happy to

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be down here to be able to testify this year on a number of pieces of legislation that we feel are positive. Whether it's the cleanup of the petition effort or this one. We know that there are other things that are coming up. We're not looking forward to, again, being opposed to LB546 which will be slots at the tracks disguised as something, but we'll deal with that later. But I would like to urge you today to please vote this out of committee and to vote for the repeal of 419 once it is on the floor. [LB64 LB181]

SENATOR McDONALD: Thank you. Any questions for Ms. Loontjer? I guess not. Thank you. [LB64 LB181]

PAT LOONTJER: Thank you. [LB64 LB181]

SENATOR McDONALD: Any other ones wishing to testify in support? [LB64 LB181]

TOM ASHBY: Thank you, Madam Chair. I'm Tom Ashby, A-s-h-b-y, and I'm here on my own behalf, but I've taken time as you all have to think about this issue and I'll tell you why. I've been a bankruptcy lawyer since 1984 and I'm one of the founding members there, you know, a dozen or more of the bankruptcy section of the Nebraska State Bar Association. I've also been active with Good News Jail and Prison Ministry and it provides on a nonprofit basis at no cost to the government, chaplains. I happen to be the vice chairman of the Greater Omaha council for that organization and I've been a volunteer in the jail since late 2002. I'm also on the Gambling with the Good Life advisory committee and a lay leader at Rockbrook United Methodist Church. And I have, I guess, three things that I was prepared to say and then a response to two questions I heard which I thought were good questions. One is public policy. I was a political science major back when I had hair. [LB64 LB181]

SENATOR DIERKS: Oh, I remember that. [LB64 LB181]

TOM ASHBY: That's right. And you know much more about public policy than I'll ever know, but from my perspective as a citizen I think it's fair, appropriate, and wise to remove this from the books, the statute books, where the substantive activity, casino gambling, is not allowed. This is especially true, I think, where 9-904 which is one of the statutes that the Senators would like to repeal, ties your hands. It says you can't do any other fee, any other tax other than basically income tax. Your hands have been tied here and I think it's smart to untie those to give you and your executive branch negotiators more power, you know, on this issue. Second thing I'd like to say is the social ills resulting from casino gambling. The casinos are not beneficial. I can indicate that from my experience as a bankruptcy lawyer and also my experience in the jails. And I apologize, I didn't know the rule on handouts, but I brought the world's smallest handouts here which is just my badge to get in and out of the jails as a volunteer. And I have seen in the inmates I work with how this can have an adverse effect not only on the inmate, but on entire families. And then numerous people will commit a crime

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because of their succumbing to addiction. I think if you get rid of these artificially low tax rates and fees, you'll be helping depopulate some of those jails if we ever get casino gambling involved, because even the forms of gambling that are legal in Nebraska are helping in some instances to populate the jails. The third thing I came here wanting to share with you, I guess, is this idea about the voters rejecting the casinos but somehow this particular initiative got passed. And I guess the light I'd shed on that is as a volunteer, you know, trying to get the word out back in 2004, there was so much effort on both sides by the casinos with millions of dollars of, I think it was more than \$23 million worth of advertising. And by the volunteers against the substance of casinos, Senators, that we didn't really have that much time and ability to sort of soak the message in on the tax rates and the fee rates. And you can think back to your own experience in 2004 and whether you remember anything at all really being argued back and forth in the general press, in the churches, in the town halls, you know, in the synagogues, just in the communities and the barber shops about the tax rates. So I've got an anecdote on that. There was a woman that I met who I knew and voted that day back in 2004. And she said I voted in favor of the tax initiative but against the others, because I don't want casinos. And I said well why did you vote in favor of the tax thing? And she said I wanted to make sure if they did get in at least they'd be taxed. Well, she didn't know that you have the full ability if your hands are untied to pass an appropriate fee and licensure rate. So that may be why you got the split in the vote that you did. Now two questions were asked. Senator Dierks, and I apologize for not having met you before, but you asked a question about the fiscal result of the bill, and I agree that there would be no immediate fiscal result either way, but I think there could be a indirect fiscal benefit from getting Nebraska's house in order in advance because your legislative counsel would know more than I do, Senator, but I'm guessing that the \$100 fee...remember, the \$100 fee is the only thing you get as a state until they start making money and that money gets taxed. I'm guessing that \$100 fee is just less than a hundredth of the legislative cost and paperwork that you would need to spend handling requests to become a casino. Okay, so I think there would be an indirect opportunity to fiscally benefit here. And of course the testifiers are right. I'm a believer in the private market and the private market has shown in Pennsylvania and other states that if you don't have an artificially low fee they'll be in the millions. And now is the time to do it before you have all kinds of public interest money coming at you if and when casinos are ever allowed in our state. And that gets, Senator McDonald, to your guestion which is on the timing of change and I thought again, the answer was correct as a lawyer. Yes, you could change after it is passed, but I think now is the time. I think morally it's better now, because then when people vote, if you ever face a vote again for the substance of casinos, people have this already in the background that this law is off the books and so forth. So it's a little bit of a fair vote, if you will. But the second thing is public policy-wise, it's much better now to untie your hands before all that lobbying money comes in unfairly, I believe, on one side of the issue. And we volunteers have to try harder, and harder, and harder, to counteract that. Thank you for your time. If there are any questions, and I apologize if I have done anything wrong or said anything wrong

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procedurally. [LB64 LB181]

SENATOR McDONALD: Any questions? I guess not. Thank you. [LB64 LB181]

TOM ASHBY: Thank you. [LB64 LB181]

SENATOR McDONALD: Any other testifiers in support? Any testifiers in opposition? Anyone opposing the legislation? Anyone in a neutral capacity? I guess Senator Kruse would...are you neutral or are you going to close? [LB64 LB181]

SENATOR KRUSE: I'm just going to close. [LB64 LB181]

SENATOR McDONALD: Okay. [LB64 LB181]

SENATOR KRUSE: And I'm not even going to sit down, apologize. I do remember my name and I still remain Lowen Kruse representing District 13. [LB64 LB181]

SENATOR McDONALD: Okay, thank you. That closes the hearing on LB64 and LB181. We'll wait a minute. I don't think Senator Synowiecki is here. Do you want to see if you could give him a call? Well, it seems to be Senator Synowiecki's busy day so he's presenting another bill. So we'll take a little rest here and then as soon as he comes in we'll continue with the hearing...So let's resume the hearing. Looks like it's your busy day. [LB251]

SENATOR SYNOWIECKI: Well, Senator McDonald, I apologize. [LB251]

SENATOR McDONALD: Not a problem. [LB251]

SENATOR SYNOWIECKI: (Exhibit 4) I just got done up at Business and Labor Committee. First of all, I have some support documents from supporter of the legislation I'd like distributed to the committee. Senator McDonald, members of the committee, I'm John Synowiecki. I represent District 7 which is from South Omaha. Today I bring before you LB251. It's a bill that repeals Section 53-174 of current Nebraska statute. Currently, this section of Nebraska law prevents the mixing of beer with other types of alcoholic drinks in a bar. Given the wide variety of mixed drinks now available, this provision, I believe, should be eliminated. The Nebraska Liquor Control Commission has indicated a neutral stance on this bill. A number of reasons make it time to repeal this provision. First, no other state in the union has this type of restriction. While states have a myriad of laws preventing any adulteration of the beverages still in the package or keg or what type of license is required to sell mixed drinks, no other state has this type of prohibition on what type of beverage can be mixed with others. It is an archaic provision that was designed to combat "boilermakers" back in prohibition days. I also believe, Senator McDonald, that this provision is a bit backwards since it encourages

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consumption of higher alcohol content drinks. Under current law, bartenders are free to mix hard liquors for consumers and can make as potent as a drink as desired from different types of hard liquors. However, oddly enough current law prevents a bartender from including a moderate beverage such as beer with hard liquor. While beer is typically about 5 percent alcohol content, hard liquor products can be 40 percent or more. So to me it does not make sense to discourage the more moderate beverage choice among consumers. Adoption of this initiative may actually promote moderation in the consumption of alcohol in our state. Also, Senator, the current provision, I believe, breeds a certain amount of disrespect for the law since it is unenforceable. This section of law does not prevent customers from ordering beer, hard liquor, or any other type of drink, nor does it prevent retailers or consumers mixing hard liquor drinks. It only prohibits making beer one of the ingredients they mix. Not only does this law discriminate against one type of beverage, but also because it is virtually impossible to enforce, it weakens the view that laws must be obeyed in our state. Obviously all laws regarding underage drinking and drunk-driving will still be in place. Because this bill pertains only to bars serving drinks on the premises and no one less than 21 years of age is allowed to buy any type of alcohol, this bill does nothing to interfere with our efforts to combat underage drinking and drunk-driving. Again, thank you, Senator McDonald and members of the committee. I would ask you to support LB251 and I do believe there are some additional testimony in support of the bill. [LB251]

SENATOR McDONALD: Thank you, Senator Synowiecki. Any questions for Senator Synowiecki? I have a question. If you're in a bar, can you order a beer and a liquor beverage and mix them yourself at the bar and not be a problem? Or is that also illegal? [LB251]

SENATOR SYNOWIECKI: You know, that's a great question. In other words, not have the bartender do it? [LB251]

SENATOR McDONALD: Right. Where you're doing it yourself? That's not legal to mix that yourself? [LB251]

SENATOR SYNOWIECKI: What strikes me, Senator McDonald, is for example, the example has been brought to me is like a Long Island Iced Tea. It's some kind of concoction that's got a whole bunch of hard liquors mixed together. That's perfectly legal. But if you wanted to mix a beer with a hard liquor, beer being very moderate in comparison in contrasting to a hard liquor, if you want to add some type of liquor to a beer that's illegal. But yet, these other drinks that have becoming, I think, increasingly popular that mix all sorts of hard liquors together is permissible. So this really is a step back in terms of the alcohol content of some of these drinks. [LB251]

SENATOR McDONALD: Senator Janssen. [LB251]

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SENATOR JANSSEN: Thank you, Senator McDonald. You can mix it. You can mix it in your mouth. (Laughter) Well, no, I'm serious. You take a drink of the beer and then take a drink of the shot of bourbon or whatever it is and it's mixed in your mouth. But you can't mix it in the glass. [LB251]

SENATOR McDONALD: Okay, are there prepackaged alcohol and beer mixes that you can purchase that are already packaged and bottled? [LB251]

SENATOR SYNOWIECKI: You know, I really don't know the answer to that. I think whenever we have a statute on the books and we're the only state of the union to have that statute, I think it might be incumbent upon us to take a look at it, and that's kind of what I'm doing here. We need to take a look at this. Is this really something that we need on our statute book at this time? What are the ramifications of having this? When you're the only one out of 50 states that are doing something a certain way, perhaps we should take a look at that and see if this is really a good public policy for the state at this time. [LB251]

SENATOR McDONALD: Okay. Senator Friend. [LB251]

SENATOR FRIEND: Thank you, Madam Chairwoman. You mean, sort of like a one-house Legislature? (Laughter) That's just a joke. Actually it's not. Sorry, that was rhetorical, Senator. I'm sorry. [LB251]

SENATOR SYNOWIECKI: Well, it fits my philosophy. [LB251]

SENATOR JANSSEN: You can mix that together. [LB251]

SENATOR McDONALD: Senator Synowiecki, you plan on closing? [LB251]

SENATOR SYNOWIECKI: I'm going to stick around. [LB251]

SENATOR McDONALD: Okay. I'll give you that option. [LB251]

SENATOR SYNOWIECKI: I'll, you know, reserve my right to do so if that's okay, Senator McDonald. [LB251]

SENATOR McDONALD: That would be fine, thanks. Okay, how many people plan to testify any testifiers on this whether it's for or against or neutral? How many testifiers do we have? Okay, all right. Those in support of LB251? [LB251]

TED POWERS: (Exhibit 5) Hello. Thanks for letting me appear. My name is Ted Powers, P-o-w-e-r-s. I'm with Anheuser-Busch in St. Louis and I've come to support LB251. As the Senator has outlined, it's a relatively simple bill that simply allows a

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bartender to mix hard liquor and beer in the same drink, Currently, the law allows only hard liquor and not beer to be one of those drinks that are mixed. So it's contrary, we think, to common sense in some respects. It's backwards in that you can mix any number of hard liquor that high proof liquors, yet beer that's generally about 5 percent can't be one of those. The question touched on, you know, whether there are these prepackaged types of mixed drinks. They're not truly mixed. There are flavored malt beverages, but those are classified currently as beer. There's a lawsuit to classify them as spirits, but in any case if this provision were repealed it wouldn't have any effect on that in the sense that you can mix the flavored malt beverages. If they were classified as liquor they could, in theory, then be mixed with any number of liquor drinks. So whatever would be mixed would be already the taxes would be paid and there would be no difference in that respect. So it doesn't have any relation to the FMB issue. As the Senator said as well, there's no relation to the underage drinking issue in the sense that this is only dealing with bartenders in licensed establishments, 21 years old. You've got to be 21 now to buy liquor or beer and you'd have to be 21 if this provision were repealed. So it doesn't have anything to do with underage, no relation to drunk driving. There isn't a whole lot to this bill really. It just simply allows bartenders to mix the drinks. So I'd be happy to take any questions if there are any. [LB251]

SENATOR McDONALD: Any questions for Mr. Powers? I guess one. Senator Karpisek. [LB251]

SENATOR KARPISEK: Thank you, Madam Chair. Could you just explain real quickly, maybe to the other Senators, the difference between the beer and the distilled spirits that why some of these are classified as beer, the Mike's Hard Lemonade or those? Is it just the beginning of the process? Is that correct? [LB251]

TED POWERS: Yes, that's true. It's, you know, where the alcohol comes from, brewing versus distilling, and the TTB has ruled that if it comes from the brewing process and if the majority of the alcohol, 51 percent or more, comes from brewing then it's classified as a beer. And it can be higher alcohol than a typical beer. If it was 10 percent alcohol, let's say, it has a maximum of 1.5 percent can come from distilling and the rest has to come from the brewing process. It's kind of an arcane business of classification and the TTB does those classifications. [LB251]

SENATOR KARPISEK: So it really doesn't have to do with the proof of the alcohol or to think of whiskey or those sort of things. It's more in how it's made from the beginning. [LB251]

TED POWERS: The distillation versus brewing process. Right. [LB251]

SENATOR KARPISEK: Thank you. Thank you, Madam Chair. [LB251]

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SENATOR McDONALD: Any other questions for Mr. Powers? Thank you for testifying. [LB251]

TED POWERS: Okay, thanks. [LB251]

SENATOR McDONALD: We'll take our next testifier in support of LB251. Any other one wishing to support LB251? Any opposing? Any opposition? We generally don't use props at all. [LB251]

DIANE RIIBE: These aren't alcohol. That's okay. These are actually nonalcoholic, but I wanted you all to see the looks because they are very similar. [LB251]

SENATOR McDONALD: Okay, would you take those away now? We've all looked at them. Would everyone look and then...we normally don't use props even if they're not alcohol. [LB251]

DIANE RIIBE: (Exhibits 6, 7, 8, and 9) As I shared, I remember Senator Jensen during a tax increase bill doing the same and so I didn't think that would be offensive. So I apologize. Good afternoon, Senator McDonald and members of the committee. My name is Diane Riibe and I'm the executive director of Project Extra Mile, a network of community coalitions across the state working for over 11 years to prevent the tragic consequences of underage drinking. We're here today to oppose the passage of LB251. Sometimes erroneously we believe referred to as the boilermaker bill. Contrary to what you may have heard this proposal does not just extend to mixing alcohol with beer on the premises of a licensed establishment. That language is included in the second half of the reference section 53-174. The first half of that section refers to the prohibition in Nebraska that it shall be unlawful for any person or for any licensee to sell or offer for sale in this state any beer to which has been added any alcohol, or the second half which says to permit any person to add any alcohol to any beer on the premises by such person or licensee. The section refers to both products sold or created for on sale consumption as well as products sold at off sale locations. Our concerns over the proposal are primarily twofold. We believe that LB251 may be an inadvertent end run to circumvent current litigation being considered in the Lancaster County District Court in a suit filed by Project Extra Mile and a parent taxpayer. Oral arguments in that case are to be heard on February 13. We also believe the issue is about kids and their health and safety, because it goes directly, we believe, to the flavored alcoholic beverage issue, an issue that many Nebraskans care deeply about. We believe this section of the statute speaks directly to a prohibition against selling any product in Nebraska where alcohol is added to beer, either already packaged, the first portion of 53-174, or on the premises of a licensed establishment, the second portion of section 53-174. In 2003, the federal government looked at 114 products known as flavored alcoholic beverages to determine what precisely they contained. Before I share the results of the Alcohol and Tobacco Tax and Trade Bureau, TTB's review of the 114 products, let me briefly share some

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information about them. It's important to understand how confusing these products are for the average person to determine their alcohol content. Their packaging is confusing, which is why I brought those products to you here today. They look like common bottled teas, juices, sodas, and lemonades that kids would be drawn to and products that they consume frequently. It is often impossible to tell the alcohol versions apart from the nonalcoholic versions. In fact, when I took the products to the statewide PTA conference several months ago and asked parents to tell me which was which, none of them could tell the alcohol versions from those without alcohol without alcohol without extensive observation of the packaging and in-depth conversation with the adults around them. These products are sold under such names as Mike's Hard Lemonade. Doc Otis Hard Lemonade, Peels Cranberry Peach, Tilt, Bacardi Silver, Hurricane Punch, Watermelon Spike, Smirnoff Twisted Raspberry, and I think we can see the picture. They don't taste like alcohol, they don't look like alcohol, and they are a mix of a lot of distilled spirits and beer. One really doesn't have to ponder the question too long to understand why the alcohol industry would use these types of names and try to mask the flavor of the alcohol in the product. They refer to this portion of the market as starter drinks. Approximately 80 percent of young people consume alcohol before their 21st birthday and that would be the segment of the market that any industry would look to target their starter products. Frighteningly, the new wave of flavored alcoholic beverages include alcohol-laced energy drinks. That's right. A large amount of caffeine, a stimulant, mixed with standardly 4-6 percent alcohol by volume; although, at the Ogallala Kwik Stop on a trip that way, I spotted one with 10 percent alcohol by volume. Energy drinks are, to no one's surprise, quite popular among young people. Back to what the federal government found when they looked at 114 of these products in 2003. They found that 105 of them had more than 75 percent distilled spirits mixed in with the brew process. And so, Senators, according to the Federal Tax and Trade Bureau, flavored alcoholic beverages are a mix of beer and distilled spirits created and packaged to reach a youthful market, and also guite illegal to be sold in Nebraska at all according to 53-174 of the first section of that. Project Extra mile has concerns about these products in the state for more than three years. We have testified before this committee, we have testified before the Liquor Control Commission, and we have spoken with the Governor about our concerns. Despite the concerns of public health advocates in Nebraska, and despite the fact that Nebraska law states that a distilled spirit is any beverage that contains any alcohol derived by the distillation process. The Liquor Control Commission has, we believe, given preferential regulatory treatment to the alcohol industry and allowed them to sell the products in Nebraska contrary to our law, and then allowed them to be taxed and regulated as beer rather than distilled spirits, costing Nebraska taxpayers millions of dollars each year in uncollected taxes every year thus saving the alcohol industry millions of dollars at the expense of our young people's well-being. Further, no one is aware of anyone ever being ticketed, certainly in years, or cited for mixing alcohol with beer on the premises of any licensed location. Certainly there would be no attempt on our part to encourage the breaking of the law at liquor licensed establishments. However, it seems a poor or interesting at

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best, time for this change to be looked at when there is no practical impact for bartenders or others and there never has been. But this law that is on the books, 53-174, does express some intent by the Legislature on the issue. And in a time when Lincoln was recently named the number four city in the country for its binge drinking rates--and we're not talking about the campus, the entire city--it would seem a poor time to encourage yet another means to increase the alcohol by volume in a drink. The public health impact seems much too high a price to simply provide increased profits to the alcohol industry. We would ask you to oppose LB251. The bill would strike a law that makes it unlawful to add beer to alcohol. At the very least, any serious review of the Liquor Control Act and this issue should wait until the Nebraska courts can address the arguments brought before them on behalf of children throughout the state. When such time comes that the issue of adding alcohol or spirits to beer is considered, it should be considered in the context of both of these issues: boilermakers and flavored alcoholic beverages. The issue should be addressed comprehensively in support of Nebraskans and their health and safety, certainly before we change our law for the benefit of the alcohol industry. I'd like to, and I know I didn't get my handouts, and so if you want to share those with those folks. These are--and you can certainly bring the other handouts as well--I won't give these to you, I promise you. But these are nearly 700 signed resolutions of support and we do have a list of those from organizations and individuals across the Nebraska, gathered over about a three month period. The resolution asked the Liquor Control Commission to reverse its decision to treat flavored alcoholic beverages as beer. Nebraskans, Senator, care about this issue and the products are not beer according to the Federal Tax and Trade Bureau's review, and most importantly, they are not beer according to Nebraska law. Signatures on the resolution come from a variety of groups including nearly 40 municipalities from Scottsbluff to Norfolk to Blair, from the Platte County Board of Supervisors to Saunders County to Dodge County, from the director of the Girls and Boys Town to Heartland United Way in Grand Island. Others include the Public Health Association of Nebraska, Lincoln-Lancaster Board of Health, Loup Basin Public Health, Central Community College in Grand Island, Garfield County Board, City of Gering, City of Minatare, Greeley County Board, YMCA of Columbus, and on, and on, the city of Hooper, the Dodge County attorney, Dodge County Board of Supervisors, Fremont Noon Optimist Club, Clay County Board, City of Ralston, PRIDE-Omaha, and on. [LB251]

SENATOR McDONALD: Okay, I'm a little confused. Are these support of this bill LB251? [LB251]

DIANE RIIBE: They're support of the commission's reversal of the decision on flavored alcoholic beverages which goes to the heart of this proposal and this bill. [LB251]

SENATOR JANSSEN: That's not what this bill is about. [LB251]

SENATOR McDONALD: But that's not what this bill is about. This is a bill about alcohol

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in...excuse me? [LB251]

SENATOR JANSSEN: That's not what this bill is. [LB251]

SENATOR McDONALD: That's absolutely right. We're talking about mixing at a bar alcohol and beer together. We're not talking about that other subject. So I really think that's irrelevant to what we're doing today. [LB251]

DIANE RIIBE: If I have misunderstood, the bill actually deletes section 53-174. Am I correct? Because I wouldn't want to misunderstand it. [LB251]

SENATOR McDONALD: Yes, it does. [LB251]

DIANE RIIBE: Okay, 53-174 actually refers to mixing alcohol and beer on the licensed premises in the first section of that. Section 53-174 actually refers to offering for sale any product where alcohol is added to beer. So, in fact, we believe it does, Senator, in all due respect. [LB251]

SENATOR McDONALD: So what you're saying, like a Mike's Hard Lemonade, is that has alcohol in it or is just flavored? [LB251]

DIANE RIIBE: It has over 76 percent. Most of those products, out of a study of 114 of those, 105 were determined to have more than 76 percent of their content were distilled spirits. And so according to 53-174, we are not in this state even allowed to offer for sale products that have alcohol added to beer, when in fact that is what the TTB ruled that those products were overall. So we do believe that it has a relevance. [LB251]

SENATOR McDONALD: Any questions? Senator Preister. [LB251]

SENATOR PREISTER: Diane, I, on the face, didn't initially have any concerns with the striking of the language. You raise some additional issues, and one of the things you raise is that this may conflict with the litigation that's currently pending. [LB251]

DIANE RIIBE: Correct. [LB251]

SENATOR PREISTER: Can you help me to understand the status, as you know it, to be of that lawsuit right now? [LB251]

DIANE RIIBE: Sure. Oral arguments will be heard on February 13, so just a few weeks from now. Again, that lawsuit asked the courts to really require the Liquor Control Commission to collect taxes on those products as though they are distilled spirits according to Nebraska law. And so that's the status of it as this point. [LB251]

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SENATOR PREISTER: Okay, thank you. [LB251]

SENATOR McDONALD: Senator Janssen. [LB251]

SENATOR JANSSEN: Well, Diane, the bill as it states, and you heard Senator

Synowiecki's opening remarks. [LB251]

DIANE RIIBE: Um-hum. [LB251]

SENATOR JANSSEN: Now, the last time I checked you had to be 21 years old before

you could consume alcohol... [LB251]

DIANE RIIBE: Correct. [LB251]

SENATOR JANSSEN: ...in a licensed establishment. That is what Senator Synowiecki's bill is about. Whether you can mix a shot of bourbon with a bottle of Budweiser, per se. It's fine to mix them in your stomach. You have to bear in mind you have to be 21 years of age, because that's what the law says you can drink at. If you were a 19 year old, came into a bar, and ordered a shot and a beer he's breaking the law, and the person who owns the establishment is also breaking the law. If an adult...if Senator Dierks walks into a bar and says I'd certainly like to have a shot of Old Crow and a bottle of Budweiser, that's fine. The bartender can serve him that. If he takes a shot of the Old Crow and chases it down with a bottle of his Budweiser is that within the law? [LB251]

DIANE RIIBE: Well, I don't know that that's the issue here for us. [LB251]

SENATOR JANSSEN: Yes, it is. It is within the law. If he takes that glass of bourbon and dumps it into his glass of beer, then he's defying the law. [LB251]

DIANE RIIBE: Well, Senator, and I understand the intent of addressing... [LB251]

SENATOR JANSSEN: That's the intent of this legislation and I suggest that you stay with that. That's my opinion. [LB251]

DIANE RIIBE: Well, and unfortunately as we read it and we had a number of attorneys look at it as well, it looks as though it strikes that entire statute. [LB251]

SENATOR JANSSEN: Did you hear his opening? [LB251]

DIANE RIIBE: And I appreciate that. I really do, but it does look like it strikes the entire section of 53-174. [LB251]

SENATOR JANSSEN: It doesn't. [LB251]

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DIANE RIBE: And let's say for purposes of the argument that is not his intent and that would be corrected, our position would still be that these are products, Senators, that include adding and mixing beer and distilled spirits. They're just packaged. And so one would have to ask as a citizen of the state why that is allowed even though our current statute disallows it and we should be jumping on changing that or working with that as quickly as possible. That is why we have the lawsuit filed and we do believe that it strikes completely 53-174. The other piece of it, Senator, as I was driving down here today I got a call from one of our communities wherein in fact, yes, a young person was in the establishment and the owner was selling to that young person knowingly. In fact, the individual who called to report to us that she had asked the owner repeatedly not to sell to minors was disregarded until they finally were caught by law enforcement. We would be nave to believe that doesn't happen. In fact, about 22 percent of all the alcohol bought in this state is purchased by young people under 21, unfortunately. [LB251]

SENATOR JANSSEN: Had that person called the local law enforcement? [LB251]

DIANE RIIBE: I'm not sure, Senator. [LB251]

SENATOR JANSSEN: Or did she just call you? [LB251]

DIANE RIIBE: No, Senator, she called the mayor who referred her to us. Yes. [LB251]

SENATOR JANSSEN: She did not call the chief of police or the county sheriff? [LB251]

DIANE RIIBE: I haven't spoken to her personally so I don't know that for certain. I do know law enforcement... [LB251]

SENATOR JANSSEN: I think that's the first place I would have called. [LB251]

DIANE RIIBE: Well, I know that law enforcement was involved ultimately. I don't know who ultimately made that call, though. [LB251]

SENATOR JANSSEN: Um-hum. [LB251]

SENATOR McDONALD: I think, unfortunately, it's against the law to drink if you're under 21 regardless of what it is. Any other questions? Thank you for your testimony. Any other testimony in opposition to the bill as it states mixing on premises, because that is what the bill is about. [LB251]

MARY DOGHMAN: (Exhibit 10) Good afternoon, Senator McDonald, members of the committee. My name is Mary Doghman, D-o-g-h-m-a-n, and I live in Omaha. I'm here today to speak to you as the mom of two teenage girls and as a taxpayer in opposition

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to LB251. Section 3 seeks to repeal legislative statute section 53-174 which clearly states that adding alcohol to beer is prohibited, whether the alcohol is added during the bottling process and then sold or added at the bar. This law clearly makes the sale of flavored alcoholic beverages, or alcopops, illegal in the state of Nebraska. These products are disproportionately popular among young girls. The alcohol industry created and markets alcopops with young females in mind and they have been guite successful in reaching teenage girls, resulting in a growing number of new drinkers. Even the alcohol industry refers to alcopops as starter drinks, but I take exception with their target audience for these drinks, my daughters, young teenage girls. Research shows that one-third of teen girls have tried alcopops and 75 percent of current eighth grade drinkers have had an alcopop in the last six months. You may say that LB251 has nothing to do with the sale of alcopops in the state of Nebraska, but I disagree. I see it as just another opportunity for the alcohol industry to make sure they are able to continue marketing and selling their products for consumption for youth in this state. My husband and I, as parents, have the responsibility to keep alcohol out of the hands of our daughters, and we take this job seriously. We have never provided alcohol for our daughters or their friends, nor will we ever. We are actively involved in our daughters' lives and we have regular conversations about our expectations for their behaviors and their personal responsibility for making good healthy choices. Raising children is a difficult and daunting task and when it comes to underage drinking, guite frankly, it's not a task that we should have to address on our own. I have expectations of my daughters, but as elected officials of my state, one in which I pay taxes, I expect you to make sound policy decisions that are in the best interest of my family's health and safety. I expect my concerns to be heard and I trust that you will act in the interest of the public health of the citizens of Nebraska, your constituents, not in the interest of the alcohol industry. I commit to do my job as a parent and raise strong healthy women who will be positive contributors to this state. Please do your job as elected officials and make policy to create an environment where the health and safety of our youth is prioritized above the deep pockets of the alcohol industry. [LB251]

SENATOR McDONALD: Excuse me. Any questions? I guess not, thank you. [LB251]

MAYA DOGHMAN: (Exhibit 11) Good afternoon, Senator McDonald... [LB251]

SENATOR McDONALD: Thank you. [LB251]

MAYA DOGHMAN: ...and members of the committee. My name is Maya Doghman, D-o-g-h-m-a-n. I am 16 years old and a junior at Omaha Central High School. I am here today to express my opposition to LB251. Section 53-174 states that adding alcohol to beer is prohibited. Flavored alcoholic beverages are products that start with a malt beverage, then the bitterness and flavor of the beer is removed and the alcohol and other sweet flavorings are added. These drinks are popular with my friends and my classmates because it is not a very big step to go from drinking lemonade, juice, and

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soda to drinking alcopops that taste sweet and similar to lemonade, juice, and soda. Why do I care? I could tell you that I'm concerned with the health and safety of my friends, because I am. I could tell you that the alcohol industry is targeting young females with the creation and marketing of alcopops, because it is. I could tell you that underage drinking is a problem and that 80 percent of current drinkers had their first drink before the age of 21, because it is a big problem. But the most prominent reason that I care, because I choose not to drink, is because I'm the one sitting at home on weekends alone, because the vast majority of my friends are out drinking. When I was a freshman I had a great group of friends who hung out together. We bowled, we shopped, we went to movies, and we stuffed ourselves at China Buffet. We had long conversations about boys, school, and our next pair of jeans, and ironically, how stupid the seniors were for wasting their weekends drinking. That group of girls has slowly dwindled to a group of two, myself included, as others have bought into the idea that drinking is cool and no big deal. Just from October to December, I have lost two of my best friends to the lies of the alcohol industry. My personal decision not to drink has been a difficult one and a costly one for me. Does it not seem wrong to anyone else besides me? Why is the good kid making good decisions sitting at home on a Saturday night? I am asking you as lawmakers in this state not to listen to the liquor lobby, and that you will oppose LB251. Instead of helping the liquor industry make drinking appealing to my friends, help create an atmosphere where alcohol is less accessible, not more accessible to my friends. Support legislation that shows concern for my health and the health of my friends. I challenge you to be concerned about underage drinking. Hear my voice. I will not be among the 80 percent who starts drinking illegally. If and when I drink, it will be at a legal age and it will be a responsible decision. To quote Robert Frost, two roads diverged in a wood, and I--I took the one less traveled by, and that has made all the difference. Will you join me on that road and be responsible lawmakers, who are concerned about the health and safety of the youth of this state? Thank you. [LB251]

SENATOR McDONALD: Thank you. Any questions? Yes, Senator Erdman. [LB251]

SENATOR ERDMAN: Maya, I want to commend you on your convictions and let you know that being right doesn't always make you popular. [LB251]

SENATOR McDONALD: Senator Dubas. [LB251]

SENATOR DUBAS: Thank you, Senator McDonald. I, too, Maya would like to say thank you. I have a daughter who is in a similar position and she's turned into a wonderful young woman who I'm very proud of and I'm sure your parents feel the same way about you. And I know it takes a lot of courage to come before a group of people that you have no idea who they are and what we represent, and I just applaud your efforts. Thank you. [LB251]

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SENATOR McDONALD: Senator Preister. [LB251]

SENATOR PREISTER: Maya, you mentioned that you had two friends that you lost. I assume someone was killed in a car accident. [LB251]

MAYA DOGHMAN: No, no, just they spend their weekends drinking now instead of doing fun things and they don't even remember their weekends, because they were too drunk to remember them. [LB251]

SENATOR PREISTER: Okay, so you see what's happening in some people's lives and that motivates you to try to take some action to correct or to influence policy... [LB251]

MAYA DOGHMAN: Right. [LB251]

SENATOR PREISTER: ...and that's why you're here. [LB251]

MAYA DOGHMAN: Right. [LB251]

SENATOR PREISTER: Okay, and this bill you see as going beyond the scope of what we may think that it does in limiting mixing distilled spirits with beer? You think that as others have said that it allows for the other kind of soft drinks that appeal to young people? [LB251]

MAYA DOGHMAN: Yes. [LB251]

SENATOR PREISTER: Okay, I don't want to put words in your mouth. [LB251]

MAYA DOGHMAN: Right. I think it's more than just...the way that I've understood it, it's more than mixing in a bar and as Diane stated, the drinking age is 21, but whether we want to look at it or we want to hide from it, teenagers drink. And teenagers drink a lot. And I see it as more than just an adult issue and a legal age issue. I see it as an underage issue also. [LB251]

SENATOR PREISTER: Okay. I, too, thank you for being here, taking time out of school. I hope that this is as least as instructive as being in class today. Thank you. [LB251]

SENATOR McDONALD: Maya, I also have a daughter that took the same road that you're taking and she spent many weekends at home by herself. But you know what? The good thing about it is we became closer as a family because we enjoyed being together. So there are some good things that are brought out of that. But, yeah, it's a tough road to handle and I applaud you for what you're doing. Thank you. Any other questions? Yes, Senator Dierks. [LB251]

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SENATOR DIERKS: You quoted one of my favorite poets and I use that quote a lot in my talks with Memorial days and Veterans' days talking about the road less traveled, and it's very difficult. Life is full of those roads less traveled, but they're probably like the poem says, in the end it makes a difference, and in the end it's going to make a difference for you, too. [LB251]

MAYA DOGHMAN: So, yeah, and I hope all you Senators take the road less traveled and help to fight against underage drinking so that you guys can make a difference in my and my friends lives. Thank you. [LB251]

SENATOR DIERKS: Thank you. [LB251]

SENATOR McDONALD: Any other testifiers in opposition? Any other ones? Anyone in a neutral capacity? [LB251]

HOBERT B. RUPE: Good afternoon, Senator McDonald, members of the committee. My name is Hobert B. Rupe. I'm the executive director of the Nebraska Liquor Control Commission. You just heard some very heartfelt statements from the young testifier. Unfortunately, we're testifying neutral on this case. If this was a bill that would have promulgate underage drinking, the commission would be in opposition to it. We're in neutral for a couple reasons. First of all, this is not a flavored malt beverage issue piece of legislation. This 53-174 comes under the prohibited acts doctrine. It goes back as far as we can tell and it was aimed directly at boilermakers. That's what it was for. Now, is it archaic? Yes. Is it hard to enforce? Nearly impossibly so. You'll read the statute. The officer has to see the person mixing the drink with the beer or see the person depth charge the shot themselves to make it be a violation against the licensee. I can tell you what the patrol does. When the patrol does a premise inspection, if they find a boilermaker, and really we're not talking about boilermakers anymore. There's far more popular styles of drinking than a traditional boilermaker, one being the Irish Car Bomb. They see that on the drink menu. The patrol will say, you know, you have to take it off the menu. That's illegal. You can't sell it. It's a violation. I've been the executive director for three years now. Prior to that, for three years I was the attorney general assigned to prosecuting cases. I can't remember in the last six years once ever seeing a case report come across either of those two desks alleging a violation of 53-174. The most I've ever seen was a patrolman on a premise inspection chart will say he left a warning on the mixing. One of the problems that you see on a lot of the act is it was originally drafted in 1935 and a lot of the prohibitions which could stand in the act come from problems that either cause prohibition or came out during prohibition. And during prohibition, you've got to remember, there was actually a split. Some people thought beer shouldn't have been included in prohibition. That was one of the big arguments even among some of the anti-temperance leagues, because beer was different, it was lower alcohol, you know, back then you didn't have three or four large breweries. You had every small town or, you know, had different breweries. So it was a different type of product

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mentally to them. But then people would try to cheat by adding the whiskey to the beer and that's how they were getting the distilled spirits. That's the only rationale that I've been able to, from a historical background, show why this prohibition exists in Nebraska. Now that's one of the beauties of the 21st amendment. You've got, you know, there's 50 different states, you've got 50 different liquor control acts or the equivalent of so there are variations. I've been unable, as Senator Synowiecki testified, to find a similar prohibition in any other state. That was going to be the basis of my testimony, but I feel that some factual issues which have been presented to this committee are erroneous and they need to be taken care of. Ms. Riibe responded to the 2003 study created by TTB. That 2003 study is no longer applicable. That was the study that TTB commissioned when it was dealing with how do they classify these things and as a result of those findings and of their public rule-making procedures, they came out with the 4951 standard where in an FMB it has to be more alcohol coming from the fermentation process, the brewing process, versus the distilling process. That study would show that some of these had 76, 77 percent...all those projects have been reformulated to meet the federal definition. Mike's Hard Lemonade has less than 49 percent of its alcohol coming from distillation. So reliance upon the 2003 study is factually erroneous because all those things have reformulated. That goes back to why the commission is, you know, just to bring people up to speed on...oh, I'm sorry. The other factual issue is, Ms. Riibe testified that the lawsuit is going to be heard on the merits on February 13. That's wrong. They're not anywhere close to the factual merits of this case. That's a hearing on a motion filed by the Attorney General's office challenging the standings of the litigants. That's what's being heard then. Is there even standing for the people who brought the lawsuit to proceed for evidence gathering and other factual determinations. So I just want to let people know, that's where that lawsuit is at currently. This bill, as stated, going back it's an old anti-boilermaker statute. That's where it's listed. It's under the section which deals with prohibited acts. If this was a question regarding the things that Ms. Riibe has raised, i.e. how it's classified, you would be looking at 53-103. That was where the definitional clause, what's a beer, what's a spirit, what that is. How is it classified and taxed? This here is clearly limited in scope, at least according to my reading of the proposal. And I'd be happy to answer any questions. [LB251]

SENATOR McDONALD: Any questions? Senator Dubas. [LB251]

SENATOR DUBAS: Thank you. Thank you for being here today, because I do have some technical questions. There are a lot of compelling issues that were raised and probably some convincing arguments, but we're charged with dealing with specifically LB251. So I really need to be crystal clear on understanding exactly what is the language that we are repealing. Is it on premise or is it on premise and prepackaged? Or specifically what is it that we are looking at repealing? And forgive me for not doing my homework. [LB251]

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HOBERT B. RUPE: According to my reading, it is against the mixing of beer and alcohol on the premise and then serving it in that way. That is what 53-174 is designed to do. There are many more other drinks out there which, I mean, maybe I'll just go this way a little bit. Why is this legislation maybe coming up now? Beer market has been primarily static, not growing, not shrinking. What they're trying to do is they're trying to sell recipes, you know, for how do you make fun, exciting drinks. By mixing beer instead of soda or water or something else. I mean, maybe that's why it's coming now finally. But the way I read it here in a provision is doing away with the prohibition against the old boilermaker prohibition. [LB251]

SENATOR McDONALD: Senator Erdman. [LB251]

SENATOR ERDMAN: Hobie, do you have a copy of 53-174 before you? [LB251]

HOBERT B. RUPE: Yes, I do. [LB251]

SENATOR ERDMAN: Can you read it out loud, please? [LB251]

HOBERT B. RUPE: It shall be unlawful for any person or any licensee to sell or offer for sale in this state any beer to which has been added any alcohol or permit any person to add any alcohol to any beer on the premises of such person or licensee. [LB251]

SENATOR ERDMAN: So your interpretation of the language is not that there are two provisions in 53-174, but there are one. [LB251]

HOBERT B. RUPE: There are one. [LB251]

SENATOR ERDMAN: So you wouldn't read it this way: It shall be unlawful for any person or for any licensee to sell or offer for sale in this state any beer which has been added any alcohol, or to permit any person to add any alcohol to any beer on the premises of such person or licensee. [LB251]

HOBERT B. RUPE: I would read it in the conjunctive rather than the separate. In other words, it's saying to the bartender you can't add the beer to it. You can't sell to somebody if you know he's going to depth charge the whiskey into the beer right then and there. It's to cover both bases. It's to cover the mixing by the bartender or server as well as prohibition against the person who's trying to consume it. [LB251]

SENATOR ERDMAN: I guess that's why you paid the money to go to law school, because I read it differently. Thank you. [LB251]

HOBERT B. RUPE: Yeah. [LB251]

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SENATOR McDONALD: Any other questions? And I think that's probably the interpretation of that statute, why we're having the confusion in the testimony, because there are those that probably interpret it just a little bit different than maybe the intent or the way you interpret it and so I'm thinking that's probably why we...the misconception. [LB251]

HOBERT B. RUPE: Well, one of the reasons I'll bring this up as a classification issue, Senator. The Nebraska Liquor Control Commission is following the federal guidelines and the Attorney General's Opinion of last year which treats where we basically follow how TTB is doing it. There's not a separate classification for flavored malt beverage out there. A Mike's Hard Lemonade, from a tax and distribution standpoint, is a beer. Right now, it would be illegal to add vodka to a glass of Mike's Hard Lemonade. It would not be illegal to add two shots of liquor to a glass of regular lemonade. I mean, that's sort of the difference where we're looking at. From a classification standpoint, those flavored malt beverages are beers so technically they can't add anything else to them. [LB251]

SENATOR McDONALD: Okay. Senator Preister. [LB251]

SENATOR PREISTER: Hobie, you said that 53-174 was the prohibited act section of the act. [LB251]

HOBERT B. RUPE: It's in part of it. It begins on 53-168. Prohibited acts, those are sections which go through enumerated acts a licensee shall not do. [LB251]

SENATOR PREISTER: So this would be in that section the appropriate place to prohibit any acts. Anything that is going to be prohibited would be within that section. [LB251]

HOBERT B. RUPE: Yes, it would be. [LB251]

SENATOR PREISTER: Okay, and so it isn't so much of a stretch to understand that people like Senator Erdman and perhaps others are seeing this is also dealing with the flavored beverages that do appeal to young people. [LB251]

HOBERT B. RUPE: I would in that, because as I said the way the commission has viewed the flavored malt beverage issue it's a classification taxation issue, not a prohibited acts. Also in prohibited acts are selling to a minor, you know, that's in 53-180. Those direct at from a licensee from actively doing something which is prohibited. The flavored malt beverage issue, as I stated, the commission looks at primarily as a classification taxation issue. I mean, it's a poorly drafted statute. Don't get me wrong. Trust me. Real logical minds can disagree on it. I just was giving you the historical perspective of how the commission has applied that statute, and they've applied it as a ban against the classic boilermaker at all. [LB251]

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SENATOR PREISTER: Thank you. [LB251]

SENATOR McDONALD: Any other questions for Mr. Hobie? Thank you for your testimony. [LB251]

HOBERT B. RUPE: Thank you. [LB251]

SENATOR McDONALD: Any other one testifying in a neutral capacity. If not, the hearings will close for the day. Oh, Senator Synowiecki, would you like to close? [LB251]

SENATOR SYNOWIECKI: If you don't mind, can I, Madam Chair? [LB251]

SENATOR McDONALD: You can. You can. [LB251]

SENATOR SYNOWIECKI: I just felt I should be kind of responsive to some of the testimony, particularly in the testimony against the bill, LB251. I wanted to make it crystal clear, absolutely crystal clear, that this is no underhanded attempt by me by any stretch of the imagination to encourage underage drinking. I wanted to make that perfectly clear on the record. My volunteer activities in my local community have almost exclusively been devoted to giving youngsters alternatives in my community. I've been involved with the All Saints Sports Club which is a nonprofit sports club in my community. I was president of that association for two years. Grover Little League baseball, South High athletics, Screaming Eagles Football Organization, and exclusively my mission in all them activities, all them volunteer activities was to give youngsters in my community positive alternatives to the kind of lifestyle that was talked about. I take exception to the testimony that was here today that kind of eluded (sic) that I was here backhandedly promoting underage drinking. Far from it. And relative to the apparent misguided testimony I would just defer to the chairman of the Liquor Control Commission relative to that, those issues relative to flavored malt liquors and those sorts of things. Thank you. [LB251]

SENATOR McDONALD: Any questions for Senator Synowiecki? If not, thank you. [LB251]

SENATOR SYNOWIECKI: Thank you. [LB251]

SENATOR McDONALD: That will close the hearings for the day. [LB251]

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Disposition of Bills:	
LB64 - Advanced to General File. LB181 - Indefinitely postponed. LB251 - Held in committee.	
Chairperson	Committee Clerk